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Proposed amendment after final office action
Attorney Docket No. D-2978

REMARKS

A final office action, which included a final rejection of all of the remaining claims, was mailed on January 30, 2004 in the hereinabove referenced patent application.

The undersigned attorney of record contacted the Examiner by telephone and the Examiner agreed to grant an after final telephonic interview after the Examiner has had a chance to consider applicant's proposed amendment to the claims.

Accordingly, this proposed amendment to the claims is being submitted for the Examiner's consideration, along with a the requisite Applicant Initiated Interview Request Form (Form PTOL 413A).

The Examiner has rejected all of the claims under 35 U.S.C. 102(b) based on a new reference, namely White, U.S. Pat. No. 5,237,945.

The Examiner states that applicant's previous amendment necessitated this new ground of rejection. Applicant vigorously disagrees. Applicant submits that the previous amendment to the claims, did not raise any new issues which would necessitate issuance of a final office action based on a newly uncovered reference. Applicant's previous amendment, filed on November 13, 2003, was made in attempt to clarify what applicant has all along been arguing are patentable features of the invention, specifically that the present erosion control systems, unlike any of the prior art references cited by the Examiner, include structure, for example, a substantially flat, planar upper surface and a substantially flat, planar lower surface, for resisting trapping of

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sediment within the matting. Applicant respectfully urges the Examiner to consider the amendment dated July 9, 2003, for example, on pages 8-9, wherein applicant has argued this issue over the Lancaster reference. In addition, applicant respectfully urges the Examiner to consider the amendment dated February 18, 2003, for example on pages 4-5, wherein applicant has argue this issue (the patentability of the feature claimed in the latest amendment) over the Lancaster reference.

Applicant submits therefore, that the finality of the latest rejection is improper, and requests that the finality thereof be withdrawn in order to grant applicant a fair opportunity to respond thereto.

Applicant submits that the invention defined in the presently proposed amended claims are not disclosed, taught or even suggested by White. Proposed amended independent claim 1 defines the erosion control system of the present invention as comprising a flexible matting including no powdered or granular material.

Furthermore, new dependent claim 27, provides an additional limitation to amended claim 1 in that the core is defined as consisting essentially of randomly oriented fibers.

New dependent claim 28 is a new dependent claim that defines the matting as consisting essentially of the core, the permanent upper layer (comprising the externally disposed biaxial geogrid), and the externally disposed grid-like netting material.

White discloses a fiber/clay matting used as a water barrier designed to waterproof a surface, for example for preventing water from reaching a surface in a toxic waste areas. A powdered or

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granular water absorbent material entrapped into the fabric is an essential feature of the White invention. White discloses that the powdered or granular material absorbs and impedes penetration of water through the article.

Applicant respectfully submits that it is well known that to anticipate a claimed invention under 35 U.S.C. 102, a reference must disclose:

each and every element of the claim at issue, and
the elements of the claim must be arranged in the same way to
achieve the same result which is asserted to be the inventive
function.

The White reference does not disclose a erosion control matting including no powdered or granular material. As stated above, White's article necessarily includes powdered or granular material. Moreover, the elements of the present invention in the proposed amendment do not achieve the same function as the White water barrier article. Applicant submits therefor that the presently proposed amended claims are not anticipated by White.

Furthermore, the White reference does not disclose, teach or even suggest a system comprising a flexible matting including no powdered or granular material incorporated therein, and further including a core; a permanent upper layer comprising an externally disposed biaxial geogrid directly bonded to the substantially flat upper surface of the core; and an externally disposed grid-like netting material directly fastened to the substantially flat lower surface of the core, as presently claimed in proposed amended claim 1.

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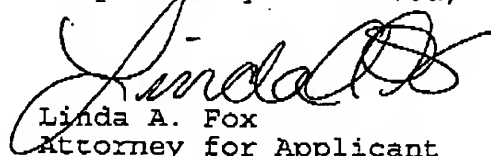
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In view of the above, applicant submits that the presently proposed amended claims are not anticipated by, and not obvious in light of, White under 35 U.S.C. 102 and 35 U.S.C. 103. Applicant submits that the presently proposed amended claims define allowable subject matter and are patentable.

Applicant respectfully requests the Examiner to enter the proposed amendment and pass the application to issuance.

Otherwise, the Examiner is requested to contact the undersigned for a telephonic interview in order to resolve any remaining issues, and in order to facilitate placing the application in condition for allowance.

Respectfully submitted,



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